

**200.0000 BASE YEAR VALUE TRANSFER**

*See Change in Ownership*

**200.0005(a) BASE YEAR VALUE TRANSFER – PRINCIPAL RESIDENCE**

**200.0006 Appeal.** Revenue and Taxation Code section 80 is available to challenge the base year value of a replacement dwelling on the ground that all of the requirements of Revenue and Taxation Code section 69.5 have been met and that, therefore, the base year value of the original property should be transferred to the replacement dwelling. Pursuant to section 80(a)(5), any resulting reduction in assessment under section 80 shall apply only to the assessment year in which the appeal is filed and prospectively thereafter. If, however, the appeals board finds that the value of the original property was higher than determined by the assessor, such value increase is effective for the date as of which the change in ownership occurred. And, as the result of Revenue and Taxation Code section 531, the assessor must make escape assessments for each year there was an underassessment resulting from such undervaluation. C 7/2/96.

**200.0007 Appeal.** A properly filed application appealing the denial of a claim for a base year value transfer pursuant to Revenue and Taxation Code section 69.5 vests an appeals board with jurisdiction to determine whether the claimant meets the requirements of that section, including the determination of the full cash value of the original property as defined by subdivision (g)(2). The applicant is a "party affected" within the meaning of Property Tax Rule 301 and is entitled to a full hearing on the merits of the application. Moreover, the current owner of the original property is also a party affected and has the right to participate as a party to the matter in the same manner as the applicant if any value increase determined by the appeals board will result in an increased tax liability for the current owner. Therefore, an appeals board is required to notify the current owner of its intention to hear and decide an application appealing such a denial when the full cash value of the original property is at issue. C 7/5/2002.

**200.0010 Calculation.** When a person sells his or her principal residence valued at \$198,000 and purchases a one-third interest in a residence valued at \$390,000, the purchased property is ineligible to receive the base year value of the former residence because the replacement dwelling is not of equal or lesser value. Although the purchaser's interest in the new residence is only valued at \$130,000, Revenue and Taxation Code section 69.5 makes it clear that comparison of values must be between the total properties involved and not just a fractional interest. C 2/7/92.

**200.0011 Calculation.** If a person sells his house and lot and purchases a home or a mobilehome on rented land, the value of the sold lot and home should be used to determine if the value of the replacement property satisfies the equal to or less than value test. When an original property is a mobilehome or structure located on leased land, the value of the land is not included for purposes of either transferring its base year value or making value comparisons. C 12/22/87.

**200.0020 Claimant (New Spouse).** Revenue and Taxation Code section 69.5(b)(7) provides that a claimant for property tax relief under section 69.5 may not have previously been granted such relief. In addition, section 69.5(g)(9) defines "claimant" for purposes of the section to include the spouse of a person who previously claimed relief under section 69.5 if that spouse is a record owner or co-owner of the replacement dwelling. Thus, if A and B are married and record owners of property which has received the benefits of section 69.5, then neither A nor B are eligible for future benefits under that section. Furthermore, if (1) A and B

divorce, (2) A marries C and (3) A and C become co-owners of record of C's replacement dwelling, C will not be eligible for relief under the section with respect to that dwelling since A also would be a claimant for purposes of C's claim. C 8/26/87.

**200.0023 Consideration.** Revenue and Taxation Code section 69.5 requires that an original property be sold and a replacement property be purchased. The term "purchase" is defined by Revenue and Taxation Code section 67 as requiring consideration. Consideration is not limited to the payment of cash. Consideration could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Further, nothing in section 67 states that the consideration must be equal in value to the value of the property transferred. While a transfer of property for nominal value should be reflected on the theory that the alleged "purchase" is a sham, the term "purchase" could include a transfer for substantial consideration even though the amount was less than the full cash value of the property received. How "little" consideration is or would be "substantial" consideration is a question of fact to be determined by the assessor on a case-by-case basis, considering all available evidence. C 10/31/2000.

**200.0024 Consideration.** Revenue and Taxation Code section 69.5 requires that a qualifying replacement property be purchased or newly constructed. "Purchase" is defined in section 67 as "a change in ownership for consideration." A claimant inherits a residence from a family member and claims it as a replacement property asserting that the decedent devised it to him in exchange for personal services and other assistance given to the decedent during her lifetime. Those services and assistance do not constitute consideration; therefore, the residence does not qualify as a replacement property, unless the claimant can prove by clear and convincing evidence that a legally enforceable agreement existed to transfer the property in exchange for those services and assistance. C 11/4/2002.

**200.0030 Exchange.** The transfer of an original property for a replacement dwelling in an Internal Revenue Code section 1031 exchange constitutes a sale of the original property for purposes of Revenue and Taxation Code section 69.5. Thus, the exchange would qualify for relief under that section provided all other requirements are met. C 8/11/2003.

**200.0035 Historical Property.** Revenue and Taxation Code section 69.5(e) provides that this section does not apply unless the transfer of the original property is a change in ownership that either (1) subjects the property to reappraisal at its current fair market value in accordance with section 110.1 or 5803 or (2) results in a base year value transferred to it from another property under sections 69, 69.3, or 69.5. The fact that an original property is a historical property that is enforceably restricted under a Mills Act contract and annually valued under Revenue and Taxation Code section 439.2 does not disqualify the property as an original property because section 439.2(d) provides that the restricted valuation cannot exceed a valuation under either section 110 or 110.1. In order to comply with subdivision (d), an assessor is thus required to reappraise an enforceably restricted historical property at its current fair market value in accordance with section 110 and its full cash value in accordance with section 110.1. C 1/13/2005.

**200.0040 Licensed Mobilehome.** The transfer of a licensed mobilehome does not qualify a replacement real property dwelling for the benefit of Revenue and Taxation Code section 69.5. The replacement dwelling would not qualify even if there were mobilehome accessories on the original property that constitute real property subject to property tax. C 6/26/91; C 3/23/89.

**200.0041 Licensed Mobilehome.** A mobilehome subject to the Vehicle License Fee does not, by itself qualify as a replacement dwelling under Revenue and Taxation Code section 69.5.

But when the replacement property consists of a licensed mobilehome that serves as a place of abode *and* the land on which it is situated, transfer of the original property's base year value should be made up to, but not exceeding, the market value of the land and any miscellaneous improvements of the replacement property. C 1/28/2000.

[200.0050](#) **Multiple Owners.** A claimant who is otherwise qualified will not be denied the benefits of Revenue and Taxation Code section 69.5 if his/her interest in a replacement dwelling is a co-ownership (either joint tenancy or tenancy in common) whereas his/her interest in the original property was that of a sole owner. Likewise, if multiple owners of a property sell it and buy a replacement dwelling and each owner retains an interest (the section does not require proportional ownership interests), the claimant qualifies. LTA 9/11/87 (No. 87/71); C 10/7/87; C 1/14/88.

[200.0053](#) **Multiple Units.** An apartment over a garage that was not rented but rather used for guests and family members may be considered as part of the principal residence unless there is evidence that the homeowner executed a lease or otherwise used the apartment for purposes incompatible with the homeowners' exemption. C 10/7/2002.

[200.0055](#) **Notice to Claimant.** Revenue and Taxation Code section 69.5 does not require that an assessor send a separate notice informing a claimant that his or her claim for transfer of a base year value has been granted. Upon the transfer of the base year value from the original property and adjustment of the base year value of the replacement dwelling, the assessor is required only to provide notice of supplemental assessment pursuant to Revenue and Taxation Code section 75.31. C 11/6/97.

[200.0059](#) **Ordinance.** An ordinance permitting intercounty base year value transfers may not restrict the relief provided by Revenue and Taxation Code section 69.5 only to severely and permanently disabled persons. C 6/7/2000.

[200.0061](#) **Original Property.** For purposes of the statutes permitting the transfer of base year values for persons over age 55, each unit of a multiunit dwelling shall be considered a separate "original property." If a person lives in one side of a duplex he or she owns, only the value of the one side may be considered in determining whether or not the "equal or lesser value" requirement of Revenue and Taxation Code section 69.5 has been satisfied. C 9/21/89.

[200.0062](#) **Original Property.** The status of a property as a duplex or a single family residence is, for purposes of Revenue and Taxation Code section 69.5, determined as of the date the property is sold. An owner claiming that a duplex has been converted to a single family residence has the burden of establishing that is so; otherwise each unit of a duplex is to be considered as a separate original property. C 6/13/90.

[200.0063](#) **Original Property.** A mobilehome subject to the Motor Vehicle License Fee and located on land owned by the claimant does not qualify as original property for purposes of Revenue and Taxation Code section 69.5. "Original property" as used in section 69.5(e) requires that the property include the place of abode, that is, that the transfer of the place of abode must constitute either a change in ownership which subjects it to reappraisal either in accordance with Revenue and Taxation Code section 110.1 or Revenue and Taxation Code section 5803, or result in a base year value determined in accord with section 69.5. C 3/23/89; C 6/26/91.

[200.0064](#) **Original Property.** In making the value comparison between an original property and a replacement property, the value of structures on the original property other than the principal place of residence must be excluded. C 9/6/94.

[200.0066](#) **Original Property.** Revenue and Taxation Code section 69.5(e) requires the assessor, upon the sale of original property, to determine a new base year value for the property, and it provides that the section shall not apply unless the transfer of the original property is a change in ownership that subjects the property to reappraisal at its current fair market value in accordance with Revenue and Taxation Code section 110.1. Conversely, there is no provision for the sale of a partial interest in an original property. C10/7/97.

[200.0067](#) **Original Property.** The sale of the entire original property in increments would qualify for the base year value transfer relief provided under Revenue and Taxation Code section 69.5 if all the sales take place within two years of the acquisition of the replacement property. For the purpose of value comparison, the full cash value of the original property would be determined by adding the fair market value of each interest sold as of its date of sale. C 6/28/2000.

[200.0068](#) **Original Property.** A man and a woman, each of whom owns a home and each of whom is otherwise eligible for Proposition 60 relief, marry. The wife rents out her house and moves into her husband's home. They intend to purchase another home and use the wife's house as a qualifying original property for transfer of base year value purposes. If they are unable to purchase a qualifying replacement property before the lapse of two years from the date the wife ceased to occupy her home, the wife must re-occupy her home as her principal residence to again establish it as a qualifying original property. She would have to present sufficient evidence to qualify the home for the homeowner's exemption for a period ending within two years of the purchase of the replacement dwelling. C 9/6/2001.

[200.0075](#) **Owner.** For purposes of applying the benefits of Revenue and Taxation Code section 69.5, the term "owner" includes the life beneficiary of two trusts, one of which is revocable and the other of which is irrevocable. While a trustor may be the owner of property held in a revocable trust, the life tenant residing in the property qualifies as an equitable owner of the interest in the property held in the irrevocable trust. C 12/20/89.

[200.0076](#) **Owner.** A minor may own real property or an interest therein, but may not convey or make contracts relating to real property. Therefore, a minor may not directly qualify for the transfer of base year value treatment of Revenue and Taxation Code section 69.5. However, a minor may obtain the benefit of that section indirectly through a guardianship or trust. In order to do so, the minor must be a beneficial owner of both the original property and the replacement property. C 11/12/99.

[200.0080](#) **Partner in Partnership.** While there are similarities in the requirements for qualifying for the homeowners' exemption and for the transfer of a base year value to a replacement property, there is also the difference that a partner may obtain an exemption on a dwelling held in the name of a partnership of which he or she is a member but cannot transfer a base year value to a replacement dwelling owned by a partnership.

The provisions of the Revenue and Taxation Code apply an aggregate theory to partnerships, i.e., the partnership is not viewed as an entity separate and apart from the partners. However, when concerned with the exclusion from change in ownership, the code clearly employs a separate entity theory. C 12/15/89.

[200.0081](#) **Property Held in Trust.** An individual holding a residence in trust should be considered the claimant for purposes of Revenue and Taxation Code section 69.5 and should receive the base year value transfer benefit of the section, assuming all of the requirements of the section are met. C 1/22/99.

**200.0084 Proposition 90 Ordinances.** A local ordinance containing language which is not in conflict with Revenue and Taxation Code section 69.5 or section 2 of article XIII A of the California Constitution and which allows for the transfer of a base year value in a specific instance, not otherwise addressed in the statute or Constitution, should be followed by the assessor. C 12/18/95.

**200.0086 Purchase.** To qualify for the Revenue and Taxation Code section 69.5 transfer of a base year value to a replacement dwelling, several requirements, including the requirement that the replacement property must be purchased, must be satisfied. Obtaining an 8 percent ownership interest in a property as a beneficiary of a trust prevents using the property as a replacement, even if the remaining 92 percent interest is obtained by purchase. Reason indicates that there must be an instance in which a gifted interest is so small that it should be ignored. Lacking such de minimis standard in section 69.5, the application of the less than 5 percent of the total value and less than \$10,000 limitation of Revenue and Taxation Code section 65.1 provides a reasonable standard. C 3/30/90; C 1/28/2000.

**200.0087 Purchase.** A property obtained by way of a gift, including an inheritance, is not purchased and therefore, does not satisfy the requirements of Revenue and Taxation Code section 69.5 which allows for the transfer of a base year value of a sold property to a purchased or constructed replacement dwelling. C 3/18/88; C 10/20/89; C 11/24/99.

**200.0088 Purchase.** Since Revenue and Taxation Code section 63 provides that change in ownership does not include transfers between spouses, the transfer of a base year value from one property to another is not available to a person who obtains the "replacement property" or an interest in such a property from a spouse. Revenue and Taxation Code section 69.5 limits the transfer of value to replacement dwellings that are purchased, which pursuant to section 63 does not include transfers between spouses. C 4/8/88; C 7/15/97.

**200.0089 Purchase.** If A and B divorce and sell their former home, neither may transfer the base year value of that property to a property owned by a new spouse. Should the new spouse grant A or B an ownership interest in the second property, and assuming all other requirements of Revenue and Taxation Code section 69.5 are met, the divorced spouse grantee would not qualify as a purchaser. C 1/22/88.

**200.0090 Purchase.** The building of a new home on the front portion of a property because the old residence is not economical to repair would not qualify the new home as a replacement property. Revenue and Taxation Code section 69.5 contemplates a sale of land and structure and the obtaining of different property of equal or lesser value. There would also be the disqualifier that the new home would undoubtedly be more valuable than the old. C 12/22/87.

**200.0091 Purchase.** In 1979 A transferred a one-half interest in his personal residence to B as a tenant in common. Subsequently, A and B bought a separate property as tenants in common. In 1990 A and B traded interests in the properties so that A again owned 100 percent of his residence and B owned 100 percent of the other property. The re-transfer of the interest A originally owned back to him does not qualify for Revenue and Taxation Code section 69.5 relief. A had only one principal place of residence throughout, and it was never replaced, even though interests in it were transferred. C 9/24/91.

**200.0092 Purchase.** In determining whether a replacement property has been purchased within two years of the sale of the original property, the timing of purchases of partial interests must be taken into account. If a partial interest was obtained outside the two year period, Revenue and Taxation Code section 69.5 is inapplicable. C 9/6/94; C 11/24/99.



**200.0093 Purchase.** The purchase of a fractional interest in land owned by others followed by construction of a principal residence ("Granny dwelling") does not qualify as the purchase of a replacement property, as is required to obtain the benefit of Revenue and Taxation Code section 69.5. However, the rental for 35 years or more or an outright purchase of the portion of the land on which the improvement is to be placed would qualify as the purchase and construction of a replacement property, with the value of both the land and improvement being considered for value comparison purposes. C 4/19/93.

**200.0094 Purchase.** To obtain the benefit of Revenue and Taxation Code section 69.5, a person must purchase the land and improvement intended as a replacement dwelling or must purchase with others such land and improvement within two years of the sale of the dwelling being replaced. The purchase of a partial interest in the land and improvement of another does not qualify the land and improvement as a replacement property. C 11/6/97.

**200.0095 Purchase.** Mr. and Mrs. J sold their large parcel and house to Z Construction Company. Z Construction subdivided this parcel and another parcel into five lots. Mr. and Mrs. J contracted to purchase one of these lots and to have Z Construction construct a house for them on that lot. The transfer of real property from Mr. and Mrs. J to Z Construction was a change in ownership under Revenue and Taxation Code section 60, since Mr. and Mrs. J had no ownership interest in Z Construction and there was no applicable exclusion. Similarly, the transfer of the subdivided lot from Z Construction to Mr. and Mrs. J was a change in ownership.

The fact that the subdivided lot was formerly a part of the large parcel owned by Mr. and Mrs. J did not make Z Construction a "holding company" pursuant to Property Tax Rule 462.200. There was nothing in the two parcel maps, the two settlement statements, and the two contracts pertaining to the transfers that indicates that anything less than the full fee interests transferred. Thus, each of the transfers qualified as a "sale" and a "purchase" for purposes of Revenue and Taxation Code section 69.5, and that exclusion was available if all the other requirements of section 69.5 were met. C 6/5/2001.

**200.0099 Replacement Dwelling's New Base Year Value.** As used in Revenue and Taxation Code section 69.5(g)(6), "...and after the purchase or the completion of new construction" means that the full cash value of the replacement dwelling is the full cash value determined immediately after the purchase of the replacement dwelling. C 3/15/94.

**200.0111 Replacement Property.** A person 55 years of age or older who sells a single family property occupied as his/her principal residence may purchase a duplex as a replacement dwelling and have the base year value of the former transferred to his/her portion of the duplex.

In determining whether or not the base year value may be transferred, all of the requirements of Revenue and Taxation Code section 69.5 must be satisfied. The value equivalency requirement is satisfied if the value of the portion of the duplex occupied as a principal residence is equal to or less than the value of the original residence. The remainder of the duplex would be appraised at its full cash value as of the date it sold, and that value would become the new base year value for that portion of the duplex.

The transfer of a base year value from a duplex or other multi-unit structure to a single family dwelling may also occur, provided all of the section 69.5 requirements are met. C 10/10/88.

**200.0112 Replacement Property.** A condominium purchased by a person over the age of 55 to replace a personal residence upon which a homeowners' exemption has been received is

eligible as a replacement dwelling to which the base year value of the former residence may be transferred, provided all statutory requirements are satisfied.

The fact that the purchaser agrees to purchase the condominium subject to a "Shared Appreciation Agreement" is immaterial, so long as the purchaser obtains the full fee interest in the property. The seller's contingent right to a future payment is not an interest in real property. The obligation to make a future payment may be considered in determining the full cash value of the condominium. C 8/9/91.

**200.0113 Replacement Property.** Property eligible for the homeowners' exemption which is sold but repossessed within eighteen months and once again occupied by the seller as his or her principal place of residence qualifies as a replacement property for purposes of Revenue and Taxation Code section 69.5. C 9/18/92.

**200.0115 Replacement Property.** A dwelling purchased or newly constructed prior to November 6, 1986 does not qualify as a replacement dwelling for purposes of Revenue and Taxation Code section 69.5. If, subsequent to this November 6th date, the owner sells the property and repurchases it a month later, it should still be so considered. The sale and repurchase would appear to be a sham.

There is, however, nothing in the statutes to prevent a person from purchasing one or more replacement dwellings in a series and having any one of them qualify as a replacement dwelling for purposes of section 69.5, provided they are bona fide purchases. C 10/7/87.

**200.0116 Replacement Property-Lease.** In order to qualify for a transfer of base year value pursuant to Revenue and Taxation Code section 69.5 where the date the replacement dwelling is purchased is the latest date (subdivision (h)(1)), a claimant must file a claim within three years of the date of purchase of the replacement dwelling and must own and occupy the replacement dwelling, thereby making it eligible for the homeowners' exemption, at the time the claim is filed. Thus, if a claimant rents out the entire replacement dwelling for two years after purchase, then occupies it as his principal residence and timely files a claim, the property would qualify for a transfer of base year value pursuant to section 69.5, assuming all other requirements are met. If timely filed, the claim would be effective from the date of the purchase of the replacement dwelling. C 4/3/2001.

**200.0117 Replacement Property-Rescission.** If the purchase of a replacement property is rescinded, the purchase of a second replacement property can qualify for the transfer of the base year value of the dwelling being replaced as provided in Revenue and Taxation Code section 69.5. The procedure for rescinding the original claim for transfer of base year value in section 69.5(i) must be followed, and the second purchase must be timely, i.e., within two years of the sale of the original property. C 9/20/94; C 11/6/97.

**200.0118 Replacement Property.** In order to satisfy the requirement of Revenue and Taxation Code section 69.5(g)(5)(B) that the replacement dwelling be "purchased ... within the first year following the date of the sale of the original property", the following three events must occur at least one day after the recordation of the deed to the original property:

1. Recordation of the deed to the replacement property;
2. Satisfaction of all escrow instructions relating to the replacement property; and
3. The replacement property sales contract becomes specifically enforceable. C 9/1/87; C 8/19/87.

**200.0119 Replacement Property.** A taxpayer has purchased a condominium to replace his principal residence and plans to purchase an adjacent condominium and then commence construction to merge the two units into one. In order for the merged unit to qualify as a replacement dwelling under Revenue and Taxation Code section 69.5, the purchase of both units must occur within two years of the sale of the original property, and the new construction converting the units to a single, merged unit which is eligible for the homeowners' exemption must be completed within two years after the sale of the original property. C 3/23/2001.

**200.0120 Replacement Property.** Taxpayer proposes to purchase an 80-acre parcel, subdivide it into four 20-acre lots, sell 3 lots, build a home on the 4<sup>th</sup> lot, sell his original property, and transfer the base year value of the original property to the one lot and house, within the two year period. The value of the 80 acres plus the new construction would exceed the value of the original property. Thus, the equal or lesser value requirement of Revenue and Taxation Code section 69.5(g)(5) would not be met.

If, at the time of completion of construction and filing a claim for transfer of base year value, the taxpayer had already subdivided the 80-acre parcel into four 20-acre lots and sold 3 of the lots within the two year period required by section 69.5, the equal or lesser value requirement of section 69.5(g)(5) would be met if the value of the replacement dwelling plus the value of the 20-acre lot did not exceed the value of the original property. In that event, the base year value of the original property could be transferred to the 20-acre lot and house. C 11/21/2000.

**200.0121 Replacement Property.** Taxpayer purchased two separate adjoining parcels, one of which included a residence. The base year value of the taxpayer's original property was transferred to the qualifying residence and parcel. Taxpayer would like to combine the two parcels into one parcel in order to have the benefits of Revenue and Taxation Code section 69.5 apply to both parcels. The combination of the two parcels must be completed within two years of the sale of the original property in order for the second parcel to be considered part of the replacement property. C 3/4/2004.

**200.0125 Sale.** Revenue and Taxation Code section 69.5(g)(8) defines "sale" as "any change in ownership of the original property for consideration." If a husband and wife own equal interests in an original property and "sell" it to their wholly-owned limited liability company in which they have equal interests, the property will be excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thus, the property will not qualify for a base year value transfer under section 69.5, which requires the original property to be reappraised upon the sale. However, if the same husband and wife "sell" their original property to a limited liability company in which they and a third party have interests, the property will not be excluded from change in ownership under section 62(a)(2) or any other provision. Under those circumstances, the home will qualify for a base year value transfer under section 69.5, since the original property will be reappraised upon the "sale." C 12/31/2002.

**200.0130 Timing.** The property tax relief granted by Revenue and Taxation Code section 69.5 is available in differing degrees depending on when the replacement property is purchased. If the replacement property is purchased prior to the sale date of the original property, the former must be of equal or lesser value to qualify for relief. The sale date of each property is rebuttably presumed (Property Tax Rule 462(n)) to be the date each deed was recorded. The presumption may be overcome by a factual showing that on some earlier date all



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escrow conditions had been fulfilled so that either party could obtain judicial enforcement of the agreement. C 8/29/90.

**200.0300(b) BASE YEAR VALUE TRANSFER – GOVERNMENT ACQUISITION**

**200.0310 Calculation.** If a four-unit residential-income property (owner resided in one unit) with an adjusted base year value of \$160,000 is sold to a governmental entity for \$200,000 and the seller purchases a replacement dwelling for \$195,000, the adjusted base year value of the acquired property would be \$40,000 plus the amount by which the full cash value of the acquired property exceeds 120 percent of the full cash value of the property from which the person was displaced, i.e., 120 percent of \$50,000 or \$60,000. The \$135,000 difference between \$60,000 and the new dwelling purchase price of \$195,000 would be added to the \$40,000 to provide a replacement property adjusted base year value of \$175,000.

Should the displaced owner purchase an income producing multi-family residential property of at least three units, the same analysis would apply, but three-fourths of the replacement purchase price and three-fourths of the adjusted base year value of the fourplex would be used in the calculation. C 5/3/88.

**200.0315 Claim.** The filing requirements of Revenue and Taxation Code section 68 are mandatory. A failure to timely file a request for a transfer of the assessed value of a property taken by governmental action to a replacement property is jurisdictional and prevents the value transfer. C 12/22/88.

**200.0316 Claim.** A failure to file a timely claim for transfer of value from a property taken by governmental action to a replacement property prevents transfer of the assessed value of the replaced property and the refund of any difference in taxes paid on the replacement property. The time limitation of Revenue and Taxation Code section 68 is not a statute of limitation within which a right must be enforced and cannot be waived. The limitation is one that if not met prevents the right of transfer from arising. Without a right, no tax overpayment occurs and no refund is possible. C 12/22/88.

**200.0317 Claim.** The time period for requesting a transfer of assessed value from a property taken by eminent domain to a replacement property is the later of four years from the date the owner vacates the taken property or the date the final date of condemnation is recorded. More than one property may qualify as a replacement if the property taken was put to multiple uses e.g., commercial and residential.

If more than one replacement property is purchased, the value of both will be considered in determining whether their value exceeds 120 percent of the amount paid for the taken property. When the amount paid by the taking governmental agency is augmented by a court award, the total amount received by the former owner is used when applying the 120 percent test. If replacement property is purchased prior to the determination of the total award and is assessed as exceeding the 120 percent limitation, it should be revalued and a refund made, if appropriate. C 9/30/87.

**200.0320 Disaster.** In a situation in which a home is destroyed by a landslide and is declared by a local government to be unfit and unsafe for human habitation, assessment reduction is not available under Revenue and Taxation Code section 68, which conditions relief thereunder upon displacement by eminent domain proceedings, acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. Assessment reduction may be appropriate under Revenue and Taxation Code sections 70 or 170 and, after July 1, 1985, under Revenue and Taxation Code section 69. C 3/18/86.

**200.0328 Exchange.** Following a court judgment finding inverse condemnation, the city exchanged other land for the condemned property as part of a comprehensive agreement

involving various properties. In order to determine the base year value of the replacement property in such a property exchange situation, the assessor is correct in making an independent estimate of market value in order to compare both the replaced and replacement properties to determine if the full cash value of the replacement property is no more than 120 percent of the full cash value of the replaced property. C 6/15/2001.

**200.0330 Government Purpose.** Acquisition of property by a public retirement system for investment purposes results in comparable replacement property being excluded from change in ownership under section 2(d) of article XIII A of the California Constitution and Revenue and Taxation Code section 68 where all other conditions for exclusion are met. Whether property is acquired for governmental purposes or for proprietary purposes is not determinative. C 2/6/84.

**200.0343 New Construction.** Replacement improvements placed on land after the transfer of base year value may qualify for the exclusion if they satisfy all the requirements of Revenue and Taxation Code section 68 and Property Tax Rule 462.500. Any construction necessary to make the replacement property comparable to the property replaced must be completed within the four-year period within which the request for assessment must be made. C 6/11/99.

**200.0350 Proceedings.** The threat of an eminent domain taking by a non-governmental agency is not a sufficient basis for transferring the base year value of the subject property to a replacement property under Revenue and Taxation Code section 68. The taking must occur as a result of eminent domain proceedings that are concluded by a stipulated or court formulated judgment. C 1/25/87.

**200.0351 Replacement Property.** Property purchased to replace property acquired by a governmental entity is eligible for the exclusion provided by Revenue and Taxation Code section 68 if it is comparable in size, utility and function to the property taken. Property is similar in function if the replacement property is subject to similar governmental restrictions such as zoning. Size and utility of property are interrelated and associated with value, not the physical measurements of the acquired or the replacement property. If the replacement property is used in the same manner as the property taken and its full cash value does not exceed 120 percent of the award or purchase price paid by the acquiring governmental entity, it is comparable in size and utility. To the extent the full cash value of the replacement property exceeds 120 percent of the award or price paid for the acquired property, the replacement property is considered to have undergone a change in ownership. C 8/2/89; C 12/12/94.

**200.0352 Replacement Property.** A property used for residential and commercial purposes which is taken by governmental action may be replaced by separate properties, one used for residential purposes and the other for commercial purposes. The person purchasing a replacement property need not be the sole owner thereof to obtain tax relief pursuant to Revenue and Taxation Code section 68. If all other requirements are satisfied, the owner of an undivided interest may obtain the benefit of the section. C 5/22/87.

**200.0354 Replacement Property.** If a governmental agency purchases a two acre parcel of land, removes the existing improvements, subdivides the two acres into two one acre parcels, builds an improvement requested by the original owner and then sells the one acre and the new improvement to the former owner, the resold portion would qualify as a replacement property referred to in Property Tax Rule 462.5. C 12/18/89.

[200.0355](#) **Replacement Property.** Residentially-zoned property does not qualify as comparable replacement property for commercially-zoned property taken by eminent domain. The two properties are subject to different government restrictions (zoning) and are, therefore, of different utility. C 5/17/94; C 5/13/94.

[200.0356](#) **Replacement Property.** Replacement land acquired to replace land taken by governmental action or eminent domain is excluded from change in ownership under Revenue and Taxation Code section 68 and Property Tax rule 462.5 if it is comparable to the land taken, even though the land taken had a building thereon. The exclusion is available only to the owner or owners of the property taken, however. Thus, if the land taken were owned by a partnership, the replacement land would have to be acquired by the partnership, not by the individual partners as tenants in common; but the exclusion would be available to the partnership to the extent of its interest in the replacement land, whether 100 percent or less than 100 percent. C 4/27/88.

[200.0357](#) **Replacement Property.** Property Tax rule 462.5 requires ownership both of "replaced property" and of "replacement property" in order for the full exclusion from change in ownership provided by section 2(d) of article XIII A of the California Constitution, Revenue and Taxation Code section 68, and the rule to be available. Thus, only improvements on replacement property consisting of a fee interest in improvements and a ground lease in excess of 35 years qualify for the transfer of the taxable value from the replaced property. While a lease of taxable real property for a term of 35 years or more is a change in ownership for purposes of reassessment, such a lease does not convey ownership of the property under real property law. C 1/7/94.

[200.0358](#) **Replacement Property.** Holding agreements involving the transfer of real property to a strawman under Internal Revenue Code section 1033 generally do not constitute changes in ownership, there being no transfer of any equitable or beneficial interest in the property. Thus, the acquisition of a replacement property by any person displaced from property through eminent domain proceedings, when title of the replacement property is acquired indirectly through a holding company does not disqualify that person from the benefits of the Revenue and Taxation Code section 68 exclusion. C 10/26/93.

[200.0359](#) **Replacement Property.** The pro-rata base year value of a fourplex used as the primary residence of its owner may be transferred to a single family residence purchased as a replacement property. If two couples own the fourplex, and each couple resides in a unit and has received a homeowners' exemption for its unit, each couple may transfer its pro-rata base year value of the fourplex to separate, single family residences acquired as replacement properties for such single family residential use. C 2/29/2000.

[200.0360](#) **Replacement Property—Comparable in Function.** Replacement property is comparable to the condemned property, if it is similar in function, that is, subject to similar zoning or general plan restrictions, or if "it is intended to be used" in the same manner, even though its actual use is out of compliance with such restrictions. The standard for determining whether there is comparability in function under Rule 462.5(c)(1) is the similarity of the government restrictions, not actual use. C 1/27/95; C 7/31/96.

[200.0361](#) **Replacement Property—Comparable in Function.** Although the future zoning restrictions on, and the future uses of, the replacement property will change and be different from those of the replaced property, the properties are comparable if, at the time of the sale or exchange, the replaced and replacement properties had similar zoning restrictions and the taxpayer's actual and intended uses of the properties were similar. C 6/15/2001.

**200.0365 Replacement Property—Date of Acquisition.** As provided in Property Tax Rule 462.500, property purchased to replace property acquired by a governmental entity is not eligible for the exclusion provided by Revenue and Taxation Code section 68 if it was acquired prior to: (1) the date of the initial written offer for the replaced property; or (2) the date the acquiring entity took final action to approve a project which resulted in an offer for or the acquisition of the replaced property; or (3) the date as declared by the court that the replaced property was taken. However, replacement improvements placed on land after these dates may qualify for the exclusion if they satisfy the requirements of comparability and ownership, even though the land on which the improvement is placed is ineligible for the exclusion. If such improvements qualify, the entire base year value of the property taken (land and improvements) may be transferred to a replacement property consisting of only improvements. Subdivision (d) of Rule 462.500 does not prohibit or restrict the reallocation of base year value when a replacement property consists of only newly constructed improvements. C 4/18/2003.

**200.0366 Replacement Property—Multiple Properties.** The condemned property was a leased automobile dealership on industrially zoned land. Taxpayer constructed five concrete tilt-up buildings, used commercially, on multiple sites that are zoned industrial. The combined full cash value of the multiple properties is less than 120 percent of the purchase price of the property taken. Thus, the base year value of the condemned property may be transferred to multiple replacement properties. Neither Revenue and Taxation Code section 68 nor Property Tax Rule 462.500 limits the availability of relief to a single replacement property. C 4/18/2003.

**200.0368 Sale and Leaseback.** Property Tax Rule 462.500(g)(2) provides that a request to transfer the base year value of a property acquired by a public entity to a replacement property shall be timely if it is made within four years of the date of conveyance or the date the taxpayer vacates the replaced property, whichever is later. The fact that the taken property was leased back to the former owners does not preclude the replacement property from qualifying. Remaining in possession of the property under the lease simply delays the onset of the four-year period within which the request to transfer the base year value to the replacement property must be made. C 10/2/2000.

**200.0370 Threat of Condemnation.** A sale directly to a private party under threat of condemnation by a governmental entity is not displacement from property by eminent domain proceedings, by acquisition by a public entity, or by governmental action which results in a judgment of inverse condemnation for purposes of Revenue and Taxation Code section 68 and Property Tax Rule 462.5. C 3/1/94.

**200.0385 Value to Transfer.** If the property acquired by the public entity has an assessed value below its adjusted base year value due to a decline in its market value (Proposition 8 value), the Proposition 8 value cannot be transferred to the replacement property pursuant to Revenue and Taxation Code section 68. The adjusted base year value of the replacement property would be the lower of its fair market value or the value derived by the application of the alternate formula set forth in section 68. C 2/1/99.



**200.0400(c) BASE YEAR VALUE TRANSFER – DISASTER RELIEF**

*See Disaster Relief*

**200.0402 Availability.** The provisions of Revenue and Taxation Code section 69 are designed to provide disaster relief by permitting the transfer of base year value when property is damaged or destroyed in an area declared by the Governor to be in a state of disaster. Damage to or destruction of individual property may well constitute a disaster to its owner; however, such loss is not eligible for section 69 relief if the damage is not the result of a disaster declared by the Governor. C 9/21/89.

**200.0420 New Construction—Additions.** Where new construction is added to a replacement property after the owner has qualified for the transfer of a base year value from property damaged or destroyed by a disaster, as declared by the Governor, the value of the new construction may be added to the value of the replacement property that qualified for transfer of the base year value, provided that the entire transaction, including the new construction, meets the time and value limits set forth in Revenue and Taxation Code section 69. C 6/24/98.

**200.0430 Replacement Property.** Revenue and Taxation Code section 69 permits the base year value of property which is substantially damaged or destroyed by a disaster to be transferred to comparable property which is acquired or newly constructed as a replacement for the substantially damaged or destroyed property if the property is damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor; if the damaged property sustains physical damages amounting to more than 50 percent of its full cash value immediately prior to the disaster; if the replacement property is located in the same county as the damaged property and is acquired or newly constructed within two years after the disaster; if the replacement property is comparable to the damaged property in size, utility, and function; and if the buyer of the replacement property was the owner of the damaged property at the time of damage. When the base year value is transferred to the replacement property, the damaged property is reassessed at its current full cash value.

Only if the replacement property was acquired or newly constructed on or after July 1, 1985, can the adjusted base year value be transferred from damaged property to replacement property. "Property" means the appraisal unit as defined in Revenue and Taxation Code section 51(e), the unit people in the market typically buy and sell. Thus, if the \$200,000 full cash value of a residential property consisted of a land value of \$110,000 and an improvement value of \$90,000, and only the improvement was destroyed by a disaster, the owner could not transfer the base year value because the appraisal unit did not sustain damages amounting to more than 50 percent of its full cash value prior to the disaster. Finally, in the event the damaged property is reconstructed, that reconstruction is not eligible for property tax relief under section 70(c) but rather, it is deemed to be new construction. LTA 3/10/87 (No. 87/23).

**200.0431 Replacement Property.** If the owner of a two story residence removes what is left of the second story after a fire and reconstructs and roofs the first story, assessment relief would be possible under Revenue and Taxation Code section 70 or section 170. If, however, a replacement residence is constructed, relief would not be available under these sections. After July 1, 1985, relief under Revenue and Taxation Code section 69 would be available for the new residence, providing all the requirements of the section were met. The context in which the terms "replacement" and "reconstruction" are used in the sections makes it clear that these terms are not intended to be synonymous. C 7/10/86.

[200.0450](#) **Time Limitations.** Revenue and Taxation Code section 69 does not prescribe a time limitations period within which a claim for transfer of a base year value must be filed. The five-year period prescribed by section 69 does not apply to claim filing but rather, is a qualifying requirement for the acquisition or new construction of replacement property. When a claim for transfer is filed, any relief for taxes paid is available only for those years not barred by the applicable statute of limitations for refund claims. C 11/2/2000.

**200.0500(d) BASE YEAR VALUE TRANSFER – CONTAMINATED PROPERTY**

*See Newly Constructed Property*

**200.0520 Comparability.** There are two separate property tax relief provisions in section 2(i) of article XIII A of the California Constitution and Revenue and Taxation Code section 69.4: one, a transfer of base year value if the owner of the contaminated property elects to sell or otherwise transfer the property; and the other, an exclusion from new construction if the owner elects to repair or reconstruct a substantially damaged or destroyed structure on the same contaminated property after the remediation of the environmental problems. The comparison tests are different for each provision. With respect to the transfer of base year value (section 2(i)(1)(A)), the replacement real property must have "a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated." Sec. 2(i)(1)(A)(i). Under the exclusion from new construction, "the repaired or replacement structure [must be] similar in size, utility, and function to the original structure." Sec. 2(i)(1)(B).

In this regard, the comparability test for the transfer of base year value set forth in section 2(i) is comparable to that set forth in section 2(a) of article XIII A and Revenue and Taxation Code section 69.5 with respect to transfers of base year values by persons over the age of 55 years ("dwelling of equal or lesser value"); and in section 2(e) of article XIII A and Revenue and Taxation Code section 69.3 with respect to property substantially destroyed by a disaster ("property of equal or lesser value"). Pursuant to those provisions, the claimant is ineligible for the exclusion if the value of the replacement property exceeds that of the original property, as defined by the Legislature. On the other hand, the comparability test for the repaired or replacement structure new construction exclusion is comparable to that set forth in section 2(d) of article XIII A and Revenue and Taxation Code section 68 with regard to property taken by eminent domain ("comparable property" "similar in size, utility, and function"), which the Legislature permits as a transferable value, with any value over and above that comparable value assessed at current market value. C 9/6/2000.

**200.0560 Replacement Property.** Property owner Z owns two lots across the street from each other. Before contamination was discovered, one lot was vacant, and the other had two structures, a single family residence and a garage with a living unit over it. Both structures were demolished due to the remediation. Z intends to build a retail store with a living unit over it on the lot that was formerly vacant. No base year value may be transferred to the vacant lot pursuant to section 2(i) of article XIII A of the California Constitution because both lots were owned by the same person and because the lot was not acquired within five years after the sale or transfer of the contaminated property. Neither will the new structure qualify for the new construction exclusion because the lot on which it is being built was vacant at the time of the remediation and thus, the new structure is not the repair or replacement of a damaged or destroyed structure on the qualified contaminated property. C 9/6/2000.

**200.0580 Value to Transfer.** The value that can be transferred from a contaminated property to a replacement property pursuant to section 2(i) of article XIII A of the California Constitution is the original factored base year value of the contaminated property, not its reduced assessed value based upon the reduction in fair market value due to the contamination. C 1/26/99.